INDIVIDUALS WITH DISABILITIES EDUCATION ACT ("IDEA")
20 U.S.C. § 1400
ARIZONA DEPARTMENT OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

Edward E. Vance, Due Process Hearing Officer
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In the Matter of:	IMPARTIAL DUE PROCESS
[redacted], by and through his Mother,	HEARING DECISION AND ORDER
Petitioner,	Reference No. 05-026
vs.	
LITCHFIELD ELEMENTARY SCHOOL DISTRICT,	Hearing Dates: March 7-11, 2005
Respondent.	Held at: Wigwam Creek Middle School 4510 N. 127th Avenue Litchfield Park, Arizona

Petitioner: [redacted]
Avondale, Arizona 85323

Respondent: Dr. Julianne Lein
Assistant Superintendent
Litchfield Elementary School District
553 E. Plaza Cir.
Litchfield Park, AZ 85340-4908

An index of Student's providers is attached hereto to identify specific personnel providing services to Student. That index is designed to be detached before release of this Decision and Order as a public record.

I. INTRODUCTION AND PROCEDURAL HISTORY

Mother filed a due process complaint ("Due Process Request") in this matter on January 24, 2005. A pre-hearing telephone conference was held on February 11, 2005, with Mother, Parent Advocate, Assistant Superintendent and other representatives of District. Confirmation of that pre-hearing telephone conference, and the procedures governing the hearing process in the due process hearing ("Due Process Hearing" or "Hearing") were set forth in a letter from the Hearing Officer to the parties dated February 12, 2005 ("Pre-Hearing Confirmation").

A. Stay Put Placement

The Due Process Request raised the issue of the appropriate "stay put" placement for Student during the pendency of this matter. The Hearing Officer entered an Order Regarding Student's "Stay Put" Placement on February 21, 2005 ("Stay Put Order"), determining that the stay put placement was at School One (rather than Private School).

B. Due Process Issues

The due process issues to be determined in this case, as set forth in the Due Process Request and clarified in the Pre-Hearing Confirmation, are as follows:

Did District deny Student's right to a free appropriate public education (FAPE) by allegedly:

1. failing to provide an appropriate placement for Student in October, 2004?

2. failing to have Student's individualized education program ("IEP") team determine Student's proposed placement?

3. failing to have all required IEP team members attend the IEP meeting held on January 11, 2005?

Parents seek a remedy of compensatory education for school days missed while Student was not attending school.

C. Evidence Introduced at Due Process Hearing

Testimony and documentary evidence were admitted at the Due Process Hearing. Nineteen (19) witnesses testified at the Hearing. See Transcript of Due Process Hearing (consisting of five volumes) ("Tr."). The exhibits disclosed by District (Exhibits D-1 through D-35), and the exhibits disclosed by Parent (Exhibits 1 through 50) were admitted into evidence. One additional exhibit offered by Parents was admitted into evidence at the Due Process Hearing without objection: Private School Referral Form (with notes of Private School Director), identified for the record as Parent Exhibit 51. Tr. Vol. V pp. 213-217.

II. FINDINGS OF FACT

1. Student has been determined to be eligible for special education as a student with autism, mild mental retardation and speech/language impairment. Ex. D-8, p. 4; Ex. D-9; P. Ex. 22, p. 4.

2. On or about March 4, 2004, an individualized education program ("IEP") was developed for Student ("2004-2005 IEP") by Student's IEP team, including Mother. The 2004-2005 IEP provided that Student's placement in pre-school through May 31, 2004, would continue in the self-contained reverse mainstream classroom. That 2004-2005 IEP also specified that Student's kindergarten placement would be determined after Student attended extended school year ("ESY") classes in the summer of 2004. Ex. D-11, pp. 1, 9; Ex. D-16 & D-17; P. Exs. 11 & 12; Tr. Vol. I, p. 199.

3. The 2004-2005 IEP was designed to provide educational benefit to Student. Tr. Vol. I, pp. 108, 153; Vol. II, pp. 19, 92, 211, & 243.

4. At the end of May, 2004, Former IEP Coordinator for District retired. Tr. Vol. I, p. 60. Special Education Director moved into her position in July, 2004. Tr. Vol. I, p. 213; Tr. Vol. IV, pp. 216-218.

5. Among other things, the 2004-2005 IEP provided for an individual assistant to assist Student throughout the school day. Ex. D-11. Aide & Home Provider provided these assistant services during ESY in June, 2004. Aide & Home Provider also provided some services to Student at home although Parents only allowed Aide & Home Provider to provide limited testimony regarding these home services. Tr. Vol. III pp. 7-18, 55-56; Ex. D-16.

6. In July, 2004, Mother called Assistant Superintendent to request that District hire Aide & Home Provider as Student's classroom assistant in the fall. District hired Aide & Home Provider to provide such services at School One. Tr. Vol. IV p. 217.

7. Prior to Student's first day of kindergarten, no placement meeting was held to determine Student's placement after ESY, but Mother knew Student was to be placed in a self-contained classroom in the Life Skills program at School One. Tr. Vol. I, pp. 244 247; Tr. Vol. III, p. 7; Tr. Vol. V, pp. 197-198. Student began the 2004-2005 school year attending School One in a self-contained classroom in the Life Skills program. Tr. Vol. I, pp. 244, 247.

8. On September 21, 2004, approximately six weeks after school started, while Student's class, including students, teacher and aides, were coming in from recess, Student ran away from the class toward the amphitheatre; Aide & Home Provider was right behind Student. Running became a game for Student and from September 22, 2004 through September 30, 2004, Student repeatedly attempted to leave the classroom and successfully left the classroom briefly on at least four occasions, but there was no evidence that Student ever went more than immediately outside the classroom door before District staff caught up with Student. Aide & Home Provider was right behind Student when Student ran, Former Life Skills Teacher implemented a reward system to address Student's running behavior, and all District staff in Student's classroom (typically 4 adults to seven students) were informed of Student's tendency to try and leave the classroom. On several occasions, a table was

placed in front of a classroom door to prevent Student's running. P. Ex. 35; Exs. D-34 & D-35; Tr. Vol. I, pp. 23-28, 33, 41, 44, 49; Tr. Vol. II, pp. 21-31, 101.

9. On September 29, 2004, Parent requested an emergency IEP for Student based on Parent's concerns with Student's safety at School One. Ex. D-19; P. Ex. 23.

10. On October 4, 2004, an IEP meeting was held and Student's Parents' concerns about Student's safety were discussed due to Student's running away from the classroom at School One. A possible change of placement for Student to Private School was discussed. Parents were adamant that Student be placed at Private School. Ex. D-21; P. Exs. 4, 13; Tr. Vol. I, pp. 215-217; Tr. Vol. II, pp. 35, 252. Parents believed that District had agreed to placement at Private School at the October 4, 2004 meeting. Tr. Vol. V, pp. 71-72, 147-148, 157-158.

11. An Addendum to Student's IEP was filled out by Former Life Skills Teacher in connection with that October 4, 2004 meeting that stated that "Possible Change of Placement. Looking into a possible opening in the [Private School] program". Portions of that Addendum had been "whited" out, but the "whited" out language was not relevant to Student or what occurred at the meeting. Additionally, Former Life Skills Teacher placed a sticky note on that Addendum that states "Do PWN when change happens" as a reminder that a prior written notice would need to be issued if there was a change of placement. No notes were taken by District personnel at the October 4 IEP meeting. P. Exs. 4 & 13; Ex. D-21; Tr. Vol. II, pp. 33-36, 69-70, 77, 107-108; Tr. Vol. III, pp. 299-300; Tr. Vol. V, p. 126.

12. No prior written notice regarding Student's placement was issued as a result of the October 4, 2004 meeting. Tr. Vol. I, p. 217.

13. After the October 4, 2004 meeting, District contacted Private School, and on October 26, 2004, Private School Director visited School One to observe Student.

Tr. Vol. II, p 137. Student attended School One for that observation, but there was no opening at Private School for Student at that time. Tr. Vol. II, p. 36.

14. Student attended School One for five days after the October 4, 2004 meeting, but did not attend School One after the October 26, 2004 observation by Private School Director. Tr. Vol. I, pp. 266-267; Tr. Vol. II, p. 36. There was no evidence that Student ran outside of the classroom in October, 2004. P. Ex. 35; Exs. D-34 & D-35.

15. From October 26, 2004, through the end of the fall semester of 2004, Private School did not have space available for Student in their program, but Student was on a waiting list at Private School. Tr. Vol. II, pp. 150, 183-184; Tr. Vol. III, p. 301.

16. On November 1, 2004, Mother sent a fax to both School One and to District's offices [but not to District's Educational Services Department] (which states "cc:" Special Education Director, "Re: Student Attendance"), indicating that Parents were keeping Student home until the transfer to Private School could occur and that Parents did not want Student dropped from the school roster. Mother states in that fax that she was advised by Special Education Director that this was the proper process to take, but Special Education Director did not recall seeing the fax or advising Mother that this was the process to take. Registrar received this fax. P. Exs. 25, 27 & 30; Tr. Vol. I, p. 318; Tr. Vol. IV, pp. 189-193.

17. Parents unilaterally determined that Student would not attend school due to Parents' perceived safety concerns based on Student's running behavior, pending availability at Private School. When District expressed concern about Student's education, Parents informed District that Student would be receiving in-home services from other sources. Tr. Vol. I, pp. 248, 250-254; Tr. Vol. III, p. 308; Tr. Vol. V, pp. 149-151.

18. While Student attended School One, Student was provided special education and related services in accordance with the 2004-2005 IEP, Student's

placement provided an opportunity for Student to obtain educational benefit, and Student made progress. Tr. Vol. I, pp. 19-21, 261; Tr. Vol. II, pp. 209-210, 244; Tr. Vol. III, pp. 102-103. While Student did engage in some temper tantrums at School One, and Student would not be able to obtain educational benefit during such behavior, the behavior was addressed by District staff, was limited in time and scope, and improved during the time Student attended School One. Exs. D-34 & D-35; P. Ex. 6; Tr. Vol. I, p. 20.

19. In late November, 2004 or December, 2004, Special Education Director contacted Private School and told Private School Director that District was not going to need a placement for Student at Private School. At that time, District did not provide a prior written notice to Parents that District was denying Parents' request that Student be placed at Private School. Tr. Vol. II, p. 165; Tr. Vol. III, pp. 332-340. Private School continued to retain Student on their waiting list. Tr. Vol. II, pp. 183-184.

20. On December 17, 2004, District sent a letter to Student's parents recommending placement of Student in a new self-contained Behavior Intervention and Communication classroom ("BIC Classroom") at School Two, and indicated that a meeting would be held with Parents. Ex. D-24; P. Ex. 14. Tr. Vol. III, pp. 328-329. District began planning and developing an educational program and placement in November and December, 2004, that culminated in the program offered in the BIC Classroom. District considered Student as a candidate for that program, as well as other identified students, but did not hold any IEP or other meetings governed by IDEA regarding Student's individual education programs without Parents. Tr. Vol. I, pp. 221-224; Tr. Vol. IV, pp. 77-78, 121-126.

21. In January, 2005, Private School Director contacted Mother and let her know that there was going to be an opening at Private School for Student; at the time, it was anticipated that opening would be immediately available. Mother informed Special Education Director of the opening, but Special Education Director was unable

to confirm that an opening was available until February, 2005. In fact, that opening did not become available until February, 2005, due to delays in another child leaving Private School. Tr. Vol. I, pp. 218-219; Tr. Vol. II, pp. 150-152, 176.

22. On January 3, 2005, Registrar filled out an Official Notice of Pupil Withdrawal for Student, stating that Student had withdrawn from School One as of October 26, 2004, based on the last date that Registrar knew Student had attended School One. Although that Notice stated that it was based on a phone call from Parents, in fact it was filled out to permit Student's records to be transferred to School Two, which Registrar understood was where Student was to be enrolled. Parents were not contacted in connection with the withdrawal form. Ex. D-22; Testimony of Registrar, Tr. Vol. IV, pp. 182-190; Ex. P-16.

23. In early January, 2005, Special Education Director called Mother to schedule a meeting to discuss placement of Student; that meeting was scheduled on January 11, 2005 at a place and time convenient for Mother, and anticipated District participants in that meeting were discussed; no written notice of that meeting was provided by District. Tr. Vol. III, pp. 353-357; Tr. Vol. V, pp. 205-211.

24. On January 11, 2005, a meeting was held with Mother, Autism Consultant, Principal School Two, Assistant Superintendent, and Special Education Director, to discuss Student's placement. Ex. D-25; Tr. Vol. I, pp. 224-226; P. Ex. 18. Autism Consultant attended the meeting at the request of Parents. Tr. Vol. III, p. 176; P. Ex. 33. At that time, Former Life Skills Teacher was no longer working for District and was not living in Arizona, and no other special education teachers at District were familiar with Student. Tr. Vol. III, pp. 374-375. Immediately prior to the formal "meeting", Mother was given an opportunity to observe the BIC Classroom at School Two, and discuss the classroom with Teacher (BIC), the classroom teacher. Autism Consultant did not observe the BIC Classroom because Autism Consultant was late to the meeting. Tr. Vol. III, p. 148; Tr. Vol. V, pp. 161-162. Teacher (BIC), an

experienced special education teacher, had reviewed Student's school records, but was not otherwise familiar with Student. Tr. Vol. IV, pp. 120-121, 161-165.

25. District's representatives at the January 11, 2005 group placement meeting were: (1) Assistant Superintendent, who had observed Student and reviewed Student's educational records, and was knowledgeable about placement options at School One, School Two and Private School [Tr. Vol. IV, pp. 218-225, 228-229; Tr. Vol. V, p. 10]; (2) Special Education Director had consulted with Former Life Skills Teacher regarding her observations of and experiences with Student in November or December, 2004, had reviewed Student's educational records and evaluations, and was knowledgeable about placement options [Tr. Vol. I, pp. 223-226, 231, 246-247, 261]; and (3) Principal School Two, who was knowledgeable about placement options at Private School and School Two [Tr. Vol. IV, pp. 77-80].

26. On January 11, 2005, District gave a prior written notice to Student's Parents proposing to place Student in the self-contained BIC Classroom at School Two, and denying placement at Private School. Ex. D-26; P. Ex. 17.

27. As of January, 2005, placement of Student in the self-contained BIC Classroom at School Two is appropriate. Tr. Vol. I, p. 136; Tr. Vol. II, p. 253.

28. Student did not attend school at District schools from October, 2004, through February 22, 2005. Tr. Vol. III, p. 306.

29. On February 22, 2005, an IEP meeting was held for Student, and the IEP team agreed to continue placement at School One based on the Hearing Officer's Stay Put Order, and Parents' concerns that a change of placement would affect the outcome of this due process decision. Tr. Vol. 1, p. 230; Ex. D-31, p. 6.

30. Parents' primary objection to the BIC Classroom is that the program is new and does not have a proven track record. Tr. Vol. V, pp. 152-153, 158; Ex. D-25.

31. Mother takes primary responsibility for handling issues regarding Student's education, on behalf of Parents. Tr. Vol. I, p. 48.

III. CONCLUSIONS OF LAW; RATIONALE

A. Burden of Proof.

The Ninth Circuit Court of Appeals has consistently held that the school has the burden of proving compliance with the Individuals with Disabilities Education Act, 20 U.S.C. Section 1400, et. seq. (1997) ("IDEA"), at the Due Process Hearing. Seattle School District v. B.S., 82 F.3d 1493, 1498 (9th Cir. 1996); Clyde K. Ex rel. Ryan K. v. Puyallup School District, 35 F.3d 1396, 1398 (9th Cir. 1994). Burden of proof is the duty of affirmatively proving a fact in dispute. District has the burden of proving, by a preponderance of the evidence, that District has complied with the requirements of IDEA, and provided a free appropriate public education ("FAPE") to Student.

B. Free Appropriate Public Education ("FAPE")

The United States Supreme Court has established a two part test to determine whether a FAPE is provided. First, have the procedures set forth in IDEA and its regulations been complied with. Failure to follow the procedures set forth in IDEA can result in a denial of FAPE if such failure either (1) results in the loss of educational opportunity or causes a deprivation of educational benefits, or (2) seriously infringes the parents' opportunity to participate in the IEP formulation process. Shapiro v. Paradise Valley Unified School Dist.No.69, 317 F.3d 1072, 1076-1077 (9th Cir. 2003); Amanda J. v. Clark County School District, 260 F.3d 1106 (9th Cir. 2001); W.G. v. Board of Trustees of Target Range School District, 960 F.2d 1479, 1484 (9th Cir.1992).

Second, is the IEP developed through these procedures "reasonably calculated to enable the child to receive educational benefits." Board of Education v. Rowley, 458 U.S. 176, 206-207 (1982). To meet this standard, Student must be provided specialized instruction and related services which are individually designed to provide educational benefit to Student. Rowley, 458 U.S. at 203.

1. Appropriateness of Placement of Student in October, 2004

A. Procedural Issues

Parents had an opportunity to, and Mother did participate in, the formulation of Student's 2004-2005 IEP. Student's placement is required to be "based upon [Student's] IEP," 34 C.F.R. § 300.552(b)(2). IDEA's implementing regulations require that the placement decision be made by a group of persons, including the parents, and other persons knowledgeable about Student, the meaning of the evaluation data, and the placement options. 34 C.F.R. § 300.552(a)(1). IDEA and its implementing regulations permit, but do not require, that the IEP team make such placement decision. See 34 C.F.R. § 300.552(a)(1); Appendix A to Part 300, question 19. District is obligated to ensure that Student's Parents are members of any group that makes decisions on the educational placement of Student. 34 C.F.R. § 300.501(c).

When Student started kindergarten, Student had an appropriate IEP in place, but there was no evidence that a group of persons knowledgeable about Student, evaluation data and placement options that determined Student's placement in a self-contained Life Skills classroom at School One. The evidence is unclear about how that "placement" was even made; District personnel changes from the end of the 2003-2004 school year to the beginning of the 2004-2005 school year were the apparent reason for the lack of a placement meeting. What is clear was that Mother, who primarily takes responsibility for Student's educational needs on behalf of Parents, knew of that placement, appeared to agree with that placement, and made no objection to that placement prior to October 4, 2004. Additionally, Student was provided special education and related services in accordance with the 2004-2005 IEP, and made progress while Student was attending School One. On these facts, the failure to follow IDEA procedures has not resulted in the loss of educational opportunity or caused a deprivation of educational benefits, or seriously infringed the Parents' opportunity to participate in the IEP formulation process.

Parents allege that District failed to provide a timely prior written notice regarding District's refusal to change Student's placement. Parents must be provided prior written notice (and information on procedural safeguards) if the school proposes (or refuses) to initiate or change the educational placement of a child. 20 U.S.C. § 1415(b)(3) & (c); 34 C.F.R. §300.503(a)(1). That prior written notice must be provided within "a reasonable time". 34 C.F.R. §300.503(a)(1).

Although Parents requested placement at Private School on October 4, 2004, District neither agreed nor rejected such placement at that time. District agreed to look into placement at Private School, and did so, but no placement was available. The earliest date that District could be viewed as denying placement at Private School was in November or December when Special Education Director informed Private School that such placement was no longer needed. However, this did not substantively affect Student's placement because there was no availability at Private School, and Private School retained Student on its waiting list. District's recommendation for placement in the BIC Classroom at School Two on December 17, 2004, was not, on its face, a proposal to change Student's placement that would require prior written notice; it stated that it was a recommended placement and that a meeting would be held with Parents. Parents alleged the January 3, 2005 withdrawal of Student from School One and registration at School Two constituted a change of placement. Even if that ministerial act were to be considered a change of placement, District did promptly provide prior written notice after the January 11, 2005 placement meeting, and that was provided within a reasonable time after January 3, 2005. Since Parents had decided that Student would not attend School One until Student could attend Private School and there was no availability at Private School prior to January 11, 2005, any procedural violation regarding a delay in providing a prior written notice had no affect on Student or Parents. Parents also asserted that District was required, as a matter of law, to take notes at the October

4, 2004 meeting. IDEA and its implementing regulations do not require that such notes be taken.

B. Substantive Issues

Parents alleged that certain home services, rather than educational services provided by District, resulted in Student's progress. Leaving aside the issue of Parents' only allowing selective testimony on such home services, under the legal standards of the Ninth Circuit Court of Appeals, District met its burden to establish that it provided a FAPE to Student. Where the benefits of school-provided and private-provided services cannot be separated, progress alone is not the appropriate test to determine meaningful educational benefit. Rather, the appropriate standard is whether the 2004-2005 IEP "was appropriately designed and implemented so as to convey [Student] with a meaningful [educational] benefit." Adams v. State of Oregon, 195 F.3d 1141, 1149 (9th Cir.1999). District established that the 2004-2005 IEP was designed to convey a meaningful educational benefit to Student and was implemented in the Life Skills classroom at School One so as to convey a meaningful educational benefit to Student.

The Ninth Circuit Court of Appeals has also determined that the appropriateness of the District's placement must be upheld if it was reasonably calculated to provide Student with educational benefits. Gregory K. v. Longview School District, 811 F.2d 1307, 1314 (9th Cir.1987). The 2004-2005 IEP was reasonably calculated to provide Student with educational benefits.

The facts regarding Student's running from the classroom also do not indicate a denial of FAPE. Parents have a legitimate concern about Student's safety, but in this case that concern appears to have been used only as a pretext for claiming placement at Private School was necessary. The facts did not establish a meaningful risk to the health and safety of Student at School One; speculative potential dangers do not constitute a denial of FAPE. Arizona regulations only allow District to place Student in a private school special education program if District is unable to provide satisfactory education

and services through its own facilities and personnel. Ariz. Admin. Code § R7-2-402(B). The evidence established that District is able to provide satisfactory education and services through its own facilities and personnel, either at School One's Life Skills program or at School Two's BIC Classroom.

2. Group Required for Determination of Student's Placement

The failure to have an appropriate group of persons determine Student's placement at the beginning of the 2004-2005 school year, is addressed in Section III (B)(1)(A) above.

For placement in January, 2005, an IEP team was not required to meet to determine Student's placement. IDEA and its implementing regulations permit, but do not require, that the IEP team make such placement decision. See 34 C.F.R. § 300.552(a)(1); Appendix A to Part 300, question 19. The appropriateness of the group of persons that did meet on January 11, 2005, to determine Student's placement is addressed below.

3. Persons Required For Determination of Placement

Since an IEP team is not required to determine placement, the applicable placement requirements will be addressed. IDEA's implementing regulations require that the placement decision be made by a group of persons, including the parents, and other persons knowledgeable about Student, the meaning of the evaluation data, and the placement options. 34 C.F.R. § 300.552(a)(1). The group that met on January 11, 2005, included the following District personnel: (1) Assistant Superintendent, who was knowledgeable about Student and placement options, (2) Special Education Director, who was knowledgeable about Student, Student's evaluation data, and placement options, and (3) Principal School Two, who was knowledgeable about placement options. Mother and Autism Consultant, at the request of Parents, also attended the meeting. Additionally, Mother was given the opportunity to observe the BIC Classroom and talk to the Teacher (BIC), before the group convened. Parents alleged a special education

teacher was required to be at that January 11, 2005 meeting on the grounds that the meeting was an IEP meeting, but placement was all that was addressed at that meeting and an IEP meeting was not required. Former Life Skills Teacher, the only special education teacher with direct observations of Student, no longer worked for District and had moved out of Arizona, so District could not have required that teacher to attend the meeting.

Parents' primary objection to the BIC Classroom is that the program is new and does not have a proven track record. No additional participants were required at the January 11, 2005 meeting to address this issue. FAPE does not require that District provide the best education to Student, only an appropriate one. FAPE is provided by new programs as well as existing ones. Based on the facts of this case, there were no additional persons required in the group making a placement decision for Student on January 11, 2005, based on the requirements of 34 C.F.R. § 300.552(a)(1).

C. Compensatory Education

Compensatory education is not a contractual remedy, but an equitable remedy, part of the court's resources in crafting "appropriate relief". Student W. v. Puyallup School Dist., 31 F.3d 1489, 1497 (9th Cir. 1994). In this case, Student did not receive educational services from District from October 26, 2004, through December, 2004, because Parents elected that Student not attend School One to receive those services. Starting January 11, 2005, Parents determined that Student would not receive educational services from District in either the Life Skills classroom at School One or the BIC Classroom at School Two. During the time that Parents elected for Student not to receive services, Parents knew that no placement was available at Private School, and that District services were available to Student if Student attended school. Parents also represented to District that Student was receiving appropriate services at home during this time. On these facts, even if a procedural violation had constituted a violation of FAPE, compensatory education would not be appropriate on equitable grounds.

D. Arizona Regulation Findings

Arizona regulations governing due process standards for special education require that a hearing officer render findings of fact and a decision on specific identified issues. Ariz. Admin. Code § R7-2-405(H)(4). Those issues are addressed as follows:

(i) There was no evidence that the evaluation procedures utilized in determining Student's needs have not been appropriate in nature and degree.

(ii) The diagnostic profile of Student on which the placement under the IEP was based is substantially verified.

(iii) Except as otherwise described herein, Student's rights have been fully observed.

(iv) Based on the foregoing, Student's placement at School One has been determined to be appropriate to the needs of Student.

(v) The placement of Student in the special education program is with the written consent of Parents.

IV. ORDER

IT IS ORDERED that the Due Process Request is denied.

V. APPEAL

Either party has the right to appeal this Decision to the Office of Administrative Hearings within thirty five (35) calendar days after receipt of this Decision. A.A.C. § R7-2-405(H)(5). Requests for appeal must be submitted in writing to: Dispute Resolution Coordinator, Arizona Department of Education, Exceptional Student Services, 1535 W. Jefferson, Phoenix, Arizona 85007. A.A.C. § R7-2-405(J)(1).

Ordered this 25th day of April, 2005.

Edward E. Vance
Due Process Hearing Officer